

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**JAMES M SMITH**

Claimant,

and

**MAINSTREAM LIVING INC**

Employer.

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**HEARING NUMBER: 12B-UI-14356**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**SECTION:** 10A.601 Employment Appeal Board Review

**D E C I S I O N**

**FINDINGS OF FACT:**

A hearing in the above matter was held on January 4, 2012, and continued on February 8, 2012. The administrative law judge's decision was issued February 8, 2012. The administrative law judge's decision has been appealed to the Employment Appeal Board. The recording of the hearing before the administrative law judge cannot be fully transcribed due to a partially audible recording. Only Part I of the recording was able to be transcribed.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2011) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Since the record of the hearing before the administrative law judge cannot be reviewed because the voice file is not completely audible, the Employment Appeal Board cannot review the entire proceeding. This matter must be remanded so that the administrative law judge can hold a limited hearing to reconstruct the record as to Part 2 of the recording.

**DECISION:**

The decision of the administrative law judge dated February 8, 2012, is not vacated at this time. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

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John A. Peno

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Monique F. Kuester

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